

**Exhibit 2**

**[Redline of Plan of Reorganization]**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re ) Chapter 11  
)  
) Case No. 07-12395 (BRL)  
BALLY TOTAL FITNESS OF ) (Jointly Administered)  
GREATER NEW YORK, INC., et al.,<sup>1</sup> )  
  
) Honorable Burton R. Lifland  
Debtors. )  
)

**FIRST AMENDED JOINT PREPACKAGED CHAPTER 11  
PLAN OF REORGANIZATION OF BALLY TOTAL FITNESS  
HOLDING CORPORATION AND ITS AFFILIATE DEBTORS**

Dated: ~~August~~September 17, 2007  
New York, New York

<sup>1</sup> The Debtors in these proceedings are: Bally Total Fitness Holding Corporation, Bally Total Fitness Corporation, Bally ARA Corporation, Bally Fitness Franchising, Inc., Bally Franchise RSC, Inc., Bally Franchising Holdings, Inc., Bally Real Estate I LLC, Bally REFS West Hartford, LLC, Bally Sports Clubs, Inc., Bally Total Fitness Franchising, Inc., Bally Total Fitness International, Inc., Bally Total Fitness of California, Inc., Bally Total Fitness of Colorado, Inc., Bally Total Fitness of Connecticut Coast, Inc., Bally Total Fitness of Connecticut Valley, Inc., Bally Total Fitness of Greater New York, Inc., Bally Total Fitness of Minnesota, Inc., Bally Total Fitness of Missouri, Inc., Bally Total Fitness of Philadelphia, Inc., Bally Total Fitness of Rhode Island, Inc., Bally Total Fitness of the Mid-Atlantic, Inc., Bally Total Fitness of the Midwest, Inc., Bally Total Fitness of the Southeast, Inc., Bally Total Fitness of Toledo, Inc., Bally Total Fitness of Upstate New York, Inc., BTF Cincinnati Corporation, BTF Europe Corporation, BTF Indianapolis Corporation, BTF Minneapolis Corporation, BTF/CFI, Inc., BTFCC, Inc., BTF Corporation, Greater Philly No. 1 Holding Company, Greater Philly No. 2 Holding Company, Health & Tennis Corporation of New York, Holiday Health Clubs of the East Coast, Inc., Holiday/Southeast Holding Corp., Jack LaLanne Holding Corp., New Fitness Holding Co., Inc., Nycon Holding Co., Inc., Rhode Island Holding Company, Tideland's Holiday Health Clubs, Inc., and U.S. Health, Inc.

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## EXHIBITS

|                      |   |
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| Exhibit A            | Amended Certificate of Incorporation of Reorganized Bally   |
| Exhibit B            | Amended By-Laws of Reorganized Bally  |
| Exhibit C            | Subscription and Backstop Purchase Agreement  |
| Exhibit D            | DIP Credit Agreement  |
| Exhibit E-1          | Rejection Claims List For Bally   |
| Exhibit E-2          | Rejection Claims List For Affiliate Debtors   |
| Exhibit F            | Form of New Credit Agreement  |
| Exhibit G-1          | New Senior Second Lien Notes Indenture (if the Harbinger Investment Effective Date Condition is satisfied)                                |
| Exhibit G-2          | New Senior Second Lien Notes Indenture (if the Backstop Rights Offering Condition is satisfied)   |
| Exhibit H            | Form of Rights Offering Senior Subordinated Notes Indenture, New Subordinated Notes Indenture and New Junior Subordinated Notes Indenture |
| Exhibit I            | New Stockholders Agreement  |
| Exhibit J            | Prepetition Management Incentive Plan   |
| Exhibit K            | Registration Rights Agreement   |
| Exhibit L            | First Restructuring Support Agreement   |
| Exhibits M-1 and M-2 | Second Restructuring Support Agreements   |
| Exhibit N            | Investment Agreement  |
| Exhibit O            | New Harbinger Subordinated Notes Indenture  |

## PLAN SCHEDULES

Plan Schedule 1.1(a) Non-Exclusive List of Litigation Claims, including derivative actions

Plan Schedule 1.1(b) Non-Exclusive List of 510(b) Equity Claims

## INTRODUCTION

Bally Total Fitness Holding Corporation (“Bally”) and the other above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) propose the following first amended prepackaged joint plan of reorganization for the resolution of the outstanding claims against and interests in the Debtors. Reference is made to the Disclosure Statement (as that term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtors’ history, business, properties and operations, projections for those operations, risk factors, a summary and analysis of this Plan (as that term is defined herein), and certain related matters including, among other things, certain tax matters, the securities to be issued under this Plan and the proposed substantive consolidation of the Debtors’ cases for certain limited purposes. Subject to certain restrictions and requirements set forth in 11 U.S.C. § 1127 and Fed. R. Bankr. P. 3019, the Debtors reserve the right to alter, amend, modify, revoke or withdraw this Plan prior to its substantial consummation.

## **ARTICLE ONE** **DEFINED TERMS AND RULES OF INTERPRETATION**

- 1.1 **Defined Terms.** Capitalized terms used in this Plan shall have the meanings set forth below. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules, will have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

*510(b) Equity Claims means* any Claim subordinated pursuant to section 510(b) of the Bankruptcy Code, including, without limitation, those claims arising from the rescission of a purchase or sale of Old Common Stock or rights relating to such Old Common Stock, or any Claim for damages arising from the purchase or sale of Old Common Stock or any Claim for reimbursement, contribution, or indemnification arising from or relating to any such Claims. A non-exclusive list of the 510(b) Equity Claims is attached to this Plan as Plan Schedule 1.1(b).

*Administrative Claim means* a Claim for costs and expenses of administration of the Chapter 11 Cases that are Allowed under section 503(b), 507(b), or 1114(e)(2) of the Bankruptcy Code, including, without limitation: (a) any actual and necessary costs and expenses incurred after the Petition Date of preserving the Debtors’ Estates and operating the businesses of the Debtors (such as wages, salaries, and commissions for services and payments for inventory, leased equipment, and premises); (b) compensation for legal, financial, advisory, accounting, and other services and reimbursement of expenses Allowed by the Bankruptcy Court under section 327, 330, 331, 363, or 503(b) of the Bankruptcy Code to the extent incurred prior to the Effective Date; (c) all fees and charges assessed against the Debtors’ Estates under section 1930, chapter 123, of title 28, United States Code; (d) any amounts and obligations owed and outstanding under the DIP Credit Agreement; (e) the Backstop Commitment Fee, to the extent payable, and, as set forth more fully in, and in accordance with, the Subscription and Backstop Purchase Agreement or the Investment Agreement, as applicable, the reasonable fees and expenses of the Backstop Parties, the New Investors and Liberation in connection with the Chapter 11 Cases and the negotiation, confirmation and implementation of this Plan and the transactions contemplated hereby; (f) the Prepetition Senior Notes Indenture Amendment Fee; (g) the Prepetition Senior Notes Indenture Trustee Fees, (h) the Prepetition Senior Subordinated

*Creditors' Committee* means the official committee of unsecured creditors of the Debtors, if any, appointed by the United States Trustee in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code.

*Debtor(s)* means, individually, any of the Debtors and, collectively, all of the above-captioned debtors and debtors-in-possession.

**Debtor-Related Released Parties means, collectively, the Debtors, their Estates, the Reorganized Debtors, the New Investors and their respective Related Persons other than any Related Person of any Debtor or Reorganized Debtor who is not entitled to be indemnified, by contract or applicable law, from any Debtor or Reorganized Debtor from and against any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities that may be asserted by any Holders of Claims or Holders of any Interests against such Related Person in its or his capacity as such.**

*DIP Agent* means the administrative agent under the DIP Credit Agreement, and its successors and assigns.

*DIP Credit Agreement* means the debtor-in-possession secured credit agreement substantially in the form attached hereto as Exhibit D.

*DIP Credit Agreement Obligations* means any loans and other indebtedness and obligations of any or all of the Debtors to any or all of the DIP Agent and the DIP Lenders pursuant to the DIP Credit Agreement and the other DIP Credit Documents.

*DIP Credit Documents* means all of the agreements, documents and instruments entered into in connection with the DIP Credit Agreement.

*DIP Lenders* means each of the financial institutions party to the DIP Credit Agreement and identified as "Lenders" therein, and their respective successors and assigns.

*DIP Lenders Claims* means any and all **"Obligations" as defined in the DIP Credit Agreement, including, without limitation, the DIP Credit Agreement Obligations and any and all other** Claims of, and any other obligations and liabilities owed to, the DIP Agent and DIP Lenders arising from or related to the DIP Credit Agreement and any other DIP Credit Document, ~~including, without limitation, the DIP Credit Agreement Obligations.~~

*DIP Lenders Liens* means any security interests and Liens granted by any Debtor to the DIP Agent and/or any DIP Lender in order to secure the repayment of any DIP Lenders Claims.

*DIP Loan Facility* means the credit facility in the aggregate principal amount not to exceed \$292,000,000 to be provided to the Debtors during the Chapter 11 Cases pursuant to the DIP Credit Agreement if the Debtors determine a DIP Credit Agreement is necessary, the proceeds of which would be used to refinance the Prepetition Lenders Claims and for general corporate purposes.

*Disbursing Agent* means the Reorganized Debtors or any party designated by the Reorganized Debtors to serve as disbursing agent under this Plan. For purposes of distributions under this Plan to the Holders of Allowed Prepetition Lenders Claims, Allowed Prepetition Senior Notes Claims, and Allowed Prepetition Senior Subordinated Notes Claims and, in the event that the Harbinger Investment Effective Date Condition is satisfied, the Old Common Stock, the Prepetition Agent, the Prepetition Senior Notes Indenture Trustee, the Prepetition Senior Subordinated Notes Indenture Trustee and the transfer agent for the Old Common Stock (which transfer agent will a successor transfer agent to be retained by the Debtors prior to the commencement of the Confirmation Hearing, and will not be the existing transfer agent), respectively, will be and shall act as the Disbursing Agent.

*Disclosure Statement* means that certain disclosure statement (including all exhibits and schedules thereto) dated as of the date hereof (and any amendments or supplements thereto), relating to this Plan, which was distributed by Bally on or about such date to the Prepetition Senior Noteholders and the Prepetition Senior Subordinated Noteholders existing as of the Voting Record Date in connection with the prepetition solicitation of their votes pursuant to section 1126(b) of the Bankruptcy Code.

*Disputed Claim* means a Claim, or any portion thereof, that (a) if the Debtors are required by order of the Bankruptcy Court to file Schedules, (i) has not been Scheduled by the Debtors or has been Scheduled at zero, or has been Scheduled as contingent, unliquidated or disputed and for which no proof of claim has been timely filed with the Bankruptcy Court or (ii) is in excess of the amount Scheduled as other than disputed, contingent or unliquidated, (b) is the subject of an objection or request for estimation filed in the Bankruptcy Court and which objection or request for estimation has not been withdrawn or overruled by a Final Order of the Bankruptcy Court, (c) is a 510(b) Equity Claim and/or (d) is otherwise disputed by any of the Debtors in accordance with applicable law, which dispute has not been withdrawn, resolved or overruled by Final Order.

*Disputed Interest* means an Interest, or any portion thereof, that (a) is the subject of an objection or request for estimation filed in the Bankruptcy Court and which objection or request for estimation has not been withdrawn or overruled by a Final Order of the Bankruptcy Court, and/or (b) is otherwise disputed by any of the Debtors in accordance with applicable law, which dispute has not been withdrawn, resolved or overruled by Final Order.

*Distribution Record Date* means the ~~Confirmation~~Effective Date.

*Effective Date* means the Business Day that this Plan becomes effective as provided in Article IX hereof.

*Entity* means an “entity” as defined in section 101(15) of the Bankruptcy Code.

*Estate(s)* means, individually, the estate of each of the Debtors and, collectively, the estates of all of the Debtors created under section 541 of the Bankruptcy Code.

*Exchange Act* means the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a *et seq.*, as amended.

*Majority Backstop Parties* means Backstop Parties holding in excess of 50% of the principal amount of Prepetition Senior Subordinated Notes held by all of the Backstop Parties.

*Master Ballot* means the ballot distributed to holders of record of the Prepetition Senior Notes and Prepetition Senior Subordinated Notes to record the votes of the beneficial holders of the Prepetition Senior Notes and Prepetition Senior Subordinated Notes, respectively, as of the Voting Record Date.

*New Agent* means the administrative agent under the New Credit Agreement, and its successors and assigns.

*New Common Stock* means the shares of common stock of Reorganized Bally authorized to be issued pursuant to this Plan and the Amended Certificate of Incorporation and By-Laws.

*New Credit Agreement* means that certain secured credit agreement between Reorganized Bally, as borrower, those entities identified as "Guarantors" in the New Credit Agreement, New Agent and New Lenders (as amended, modified, or supplemented from time to time, with the prior written consent of the Majority Backstop Parties (if the Subscription and Backstop Purchase Agreement is then in effect) and/or the New Investors (if the Investment Agreement is then in effect), in each case, which consent shall not be unreasonably withheld, conditioned or delayed), in an aggregate principal amount of at least \$292 million, and substantially in the form attached hereto as Exhibit F.

*New Harbinger Subordinated Notes* means, in the event that the Harbinger Investment Effective Date Condition is satisfied, the New Senior Subordinated Notes due 2013 to be issued by Reorganized Bally under the New Harbinger Subordinated Notes Indenture in the aggregate principal amount of \$200 million. The New Harbinger Subordinated Notes shall be subordinate in priority of payment to the New Senior Second Lien Notes or any refinancing thereof.

*New Harbinger Subordinated Notes Indenture* means, in the event that the Harbinger Investment Effective Date Condition is satisfied, that certain Amended and Restated Indenture, to be dated as of the Effective Date, among Reorganized Bally, as issuer, and the New Harbinger Subordinated Notes Indenture Trustee, relating to the New Harbinger Subordinated Notes, substantially in the form of Exhibit O attached to this Plan.

*New Harbinger Subordinated Notes Indenture Trustee* means, in the event that the Harbinger Investment Effective Date Condition is satisfied, HSBC Bank USA, National Association, as the indenture trustee under the New Harbinger Subordinated Notes Indenture, and its successors and assigns.

*New Investors* means Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund L.P.

*New Junior Subordinated Notes* means, in the event that the Backstop Rights Offering Effective Date Condition is satisfied, the New Junior Subordinated Notes due 2013 to

be issued by Reorganized Bally under the New Junior Subordinated Notes Indenture in the aggregate principal amount not to exceed 21.7% of the Allowed Prepetition Senior Subordinated Notes Claims plus 21.7% of the Allowed Class 6-B-1 Claims. The New Junior Subordinated Notes shall be subordinate in priority of payment to the New Senior Second Lien Notes, the Rights Offering Senior Subordinated Notes and the New Subordinated Notes.

*New Junior Subordinated Notes Indenture* means, in the event that the Backstop Rights Offering Effective Date Condition is satisfied, that certain Amended and Restated Indenture, to be dated as of the Effective Date, among Reorganized Bally, as issuer, and the New Junior Subordinated Notes Indenture Trustee, relating to the New Junior Subordinated Notes, substantially in the form of Exhibit H attached to this Plan.

*New Junior Subordinated Notes Indenture Trustee* means, in the event that the Backstop Rights Offering Effective Date Condition is satisfied, HSBC Bank USA, National Association, as the indenture trustee under the New Junior Subordinated Notes Indenture, and its successors and assigns.

*New Lenders* means each of the financial institutions party to the New Credit Agreement and identified as “Lenders” therein, and their respective successors and assigns.

*New Securities and Documents* has the meaning given in Section 5.6 of this Plan.

*New Senior Second Lien Notes* means the New Senior Second Lien Notes due 2011 to be issued by Reorganized Bally under the New Senior Second Lien Notes Indenture in the aggregate principal amount of \$247,337,500. The New Senior Second Lien Notes shall be senior in priority of payment over the Rights Offering Senior Subordinated Notes (if any), the New Subordinated Notes (if any), the New Junior Subordinated Notes (if any) and the New Harbinger Subordinated Notes (if any). The New Senior Second Lien Notes will be secured by Liens on the same assets that secure the obligations under the New Credit Agreement, which Liens shall be subordinate in priority to the Liens securing the obligations under the New Credit Agreement.

*New Senior Second Lien Notes Indenture* means that certain Indenture, to be dated as of the Effective Date, among Reorganized Bally, as issuer, certain Affiliate Debtors, as guarantors, and the New Senior Second Lien Notes Indenture Trustee, relating to the New Senior Second Lien Notes, substantially in the forms of Exhibits G-1 (if the Harbinger Investment Effective Date Condition is satisfied) and G-2 (if the Backstop Rights Offering Condition is satisfied) attached to this Plan.

*New Senior Second Lien Notes Indenture Trustee* means U.S. Bank National Association, as the indenture trustee under the New Senior Second Lien Notes Indenture, and its successors and assigns.

*New Stockholders Agreement* means, in the event that the Backstop Rights Offering Effective Date Condition is satisfied, that certain stockholders agreement to be entered into on the Effective Date by and among Reorganized Bally and all holders of the New Common Stock, substantially in the form of Exhibit I attached to this Plan.

*New Subordinated Notes* means, in the event that the Backstop Rights Offering Effective Date Condition is satisfied, the New Senior Subordinated Notes due 2013 to be issued by Reorganized Bally under the New Subordinated Notes Indenture in the aggregate principal amount not to exceed 24.8% of the Allowed Prepetition Senior Subordinated Notes Claims plus 24.8% of the Allowed Class 6-B-1 Claims. The New Subordinated Notes shall be subordinate in priority of payment to the New Senior Second Lien Notes and the Rights Offering Senior Subordinated Notes, and senior in priority of payment to the New Junior Subordinated Notes.

*New Subordinated Notes Indenture* means, in the event that the Backstop Rights Offering Effective Date Condition is satisfied, that certain Amended and Restated Indenture, to be dated as of the Effective Date, among Reorganized Bally, as issuer, and the New Subordinated Notes Indenture Trustee, relating to the New Subordinated Notes, substantially in the form of Exhibit H attached to this Plan.

*New Subordinated Notes Indenture Trustee* means, in the event that the Backstop Rights Offering Effective Date Condition is satisfied, HSBC Bank USA, National Association, as the indenture trustee under the New Subordinated Notes Indenture, and its successors and assigns.

*Non-Tax Priority Claim* means a Claim, other than an Administrative Claim or Priority Tax Claim, that is entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code.

*Old Affiliate Interests* means, collectively, the shares of stock, whether common or preferred, general and limited partnership interests, or member or other ownership interests of the Affiliate Debtors, as applicable, issued and outstanding as of the Petition Date, and all options, warrants, calls, rights, puts, awards, commitments, or any other agreements of any character to acquire such stock or interests.

*Old Common Stock* means the common stock of Bally that is outstanding immediately prior to the Petition Date, including, without limitation, treasury stock and any other such interests that are authorized to be issued but have not been issued and the 510(b) Equity Claims.

*Old Common Stock Cash Amount* means, in the event that the Harbinger Investment Effective Date Condition is satisfied, \$16.5 million.

**Old Common Stock Cash Portion means, in the event that the Harbinger Investment Effective Date Condition is satisfied, that portion of the Old Common Stock Cash Amount reserved solely for the Holders of Allowed Interests represented by Old Common Stock, which portion equals the Old Common Stock Cash Amount multiplied by the fraction the numerator of which equals the Old Common Stock Cash Amount and the denominator of which equals the sum of (x) the Old Common Stock Cash Amount plus (y) the aggregate face amount of all Allowed 510(b) Equity Claims; provided, however, that for purposes of making interim distributions hereunder to holders of Allowed Class 7**

Claims, clause (y) of the denominator shall be the aggregate maximum amount of all 510(b) Equity Claims asserted by the holders thereof.

Old Common Stock Remaining Cash Portion means, in the event that the Harbinger Investment Effective Date Condition is satisfied, that portion of the Old Common Stock Cash Amount reserved solely for the Holders of Allowed 510(b) Equity Claims, which portion equals the Old Common Stock Cash Amount less the Old Common Stock Cash Portion.

*Old Unexercised Equity Interests* means all unexercised options, warrants, calls, rights, puts, awards, commitments, or any other agreements of any character to acquire Old Common Stock.

Other Released Parties means, collectively, the Released Parties other than the Debtor-Related Released Parties.

*Other Secured Claim* means a Secured Claim other than an Administrative Claim, Secured Tax Claim or Prepetition Lenders Claim.

*Person* means any natural person, corporation, general or limited partnership, limited liability company, firm, trust, association, government, governmental agency or other Entity, whether acting in an individual, fiduciary or other capacity.

*Petition Date* means the date on which the Debtors file their petitions for relief commencing the Chapter 11 Cases.

*Plan* means this first amended joint prepackaged chapter 11 plan of reorganization, including the Exhibits and Plan Schedules and all supplements, appendices, and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

Plan-Related Claim means any and all claims against any Debtor or any other Released Party as to which such person or entity is exculpated pursuant to Section 1125(e) of the Bankruptcy Code, including, without limitation, to the maximum extent provided by Section 1125(e) of the Bankruptcy Code, any and all claims against any Debtor or other Released Party for violating any provisions of the Securities Act of 1933 or any State or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker or dealer in, a security, in connection with any or all of the prepetition or postpetition solicitation of acceptances of the Plan, the prepetition or postpetition solicitation of subscriptions with respect to the Rights Offering, the Subscription and Backstop Purchase Agreement, the Investment Agreement (if the Harbinger Investment Effective Date Condition is satisfied), the First Restructuring Support Agreement, the Second Restructuring Support Agreement, and the acts taken under any of the foregoing.

*Plan Schedule* means a schedule annexed to either this Plan or as an appendix to the Disclosure Statement (as amended, modified or otherwise supplemented from time to time).

*Prepetition Senior Noteholders* means the Holders of the Prepetition Senior Notes Claims.

*Prepetition Senior Notes* means the 10.5% Senior Notes due 2011 issued by Bally prior to the Petition Date under the Prepetition Senior Notes Indenture.

*Prepetition Senior Notes Claims* means any and all Claims, obligations and liabilities arising from or related to the Prepetition Senior Notes and/or Prepetition Senior Notes Indenture, including, without limitation, the “Indenture Obligations” (as such term is defined in the Prepetition Senior Notes Indenture), which Claims shall be Allowed in the aggregate principal amount of \$235,000,000, plus interest and reasonable fees, costs and expenses that have accrued but remain unpaid as of the Petition Date pursuant to the Prepetition Senior Notes Indenture (which final aggregate amount shall be set forth in the Confirmation Order).

*Prepetition Senior Notes Indenture* means that certain Indenture, dated as of July 2, 2003, among Bally, as issuer, certain Affiliate Debtors, as guarantors, and the Prepetition Senior Notes Indenture Trustee, relating to the Prepetition Senior Notes (as amended, modified, or supplemented from time to time).

*Prepetition Senior Notes Indenture Amendment Fee* means that certain amendment fee in the aggregate amount of \$4,700,000, which fee shall be (i) in consideration of the amendments to the Prepetition Senior Notes Indenture as reflected in the New Senior Second Lien Notes Indenture; and (ii) paid to the Prepetition Senior Notes Indenture Trustee for the benefit of all Prepetition Senior Noteholders and shared on a Pro Rata basis with such holders.

*Prepetition Senior Notes Indenture Trustee* means U.S. Bank National Association, as the indenture trustee under the Prepetition Senior Notes Indenture, and its successors and assigns.

*Prepetition Senior Notes Indenture Trustee Fees* means the reasonable ~~fees and~~ [reasonable](#) unpaid out-of-pocket costs and expenses incurred by the Prepetition Senior Notes Indenture Trustee through the Effective Date in accordance with the Prepetition Senior Note Indenture.

*Prepetition Senior Subordinated Noteholders* means the Holders of the Prepetition Senior Subordinated Notes Claims.

*Prepetition Senior Subordinated Notes* means, collectively, the 9.875% Senior Subordinated Notes due 2007, Series B, and the 9.875% Senior Subordinated Notes due 2007, Series D, issued by Bally prior to the Petition Date under the Prepetition Senior Subordinated Notes Indenture.

*Prepetition Senior Subordinated Notes Claims* means any and all Claims, obligations and liabilities arising from or related to the Prepetition Senior Subordinated Notes and/or Prepetition Senior Subordinated Notes Indenture, including, without limitation, the “Indenture Obligations” (as such term is defined in the Prepetition Senior Subordinated Notes

Indenture), which Claims shall be Allowed in the aggregate amount (including accrued and unpaid interest) of \$323,041,667.

*Prepetition Senior Subordinated Notes Indenture* means, collectively, that certain Indenture, dated as of October 7, 1997, and that certain Indenture, dated as of December 16, 1998, in each case by and between Bally, as issuer, and the Prepetition Senior Subordinated Notes Indenture Trustee, relating to the Prepetition Senior Subordinated Notes (as amended, modified, or supplemented from time to time).

*Prepetition Senior Subordinated Notes Indenture Trustee* means HSBC Bank USA, [National Association](#), as the indenture trustee under the Prepetition Senior Subordinated Notes Indenture, and its successors and assigns.

*Prepetition Senior Subordinated Notes Indenture Trustee Fees* means the reasonable, [fees and reasonable](#) unpaid out-of-pocket costs and expenses incurred by the Prepetition Senior Subordinated Notes Indenture Trustee through the Effective Date in accordance with the Prepetition Senior Subordinated Note Indenture.

*Priority Tax Claim* means a Claim of a governmental unit of the kind specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code, including a Secured Tax Claim.

*Professional* means (a) any professional employed in the Chapter 11 Cases pursuant to section 327 or 1103 of the Bankruptcy Code or otherwise and (b) any professional or other Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Cases pursuant to section 503(b)(4) of the Bankruptcy Code.

*Professional Fees* means an Administrative Claim of a Professional for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date (including expenses of the members of the Creditors' Committee incurred as members of the Creditors' Committee in discharge of their duties as such).

*Professional Fees Bar Date* means the Business Day that is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

*Pro Rata* means with respect to a distribution regarding a particular Class (or several Classes taken as a whole), the proportion that (a) the Allowed amount of a Claim or Interest in a particular Class (or several Classes taken as a whole) bears to (b) the aggregate Allowed amount of all Claims or Interests in such Class (or several Classes taken as a whole), unless this Plan provides otherwise.

*Quarterly Distribution Date* means the last Business Day of the month following the end of each calendar quarter after the Effective Date; provided, however, that if the Effective Date is within thirty (30) days of the end of a calendar quarter, then the first Quarterly Distribution Date will be the last Business Day of the month following the end of the first calendar quarter after the calendar quarter in which the Effective Date falls.

accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified as described below.

This Plan constitutes a single plan of reorganization for all Debtors for all purposes, including, without limitation, for voting, confirmation, and distribution purposes. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim or Interest is also placed in a particular Class for the purpose of receiving distributions pursuant to this Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date. As described more fully in Section 5.1 below, this Plan contemplates and is predicated upon entry of an order substantively consolidating the Debtors for the limited purposes of voting, confirmation and distribution with respect to Allowed Class 5 Claims and Allowed Class 6-~~EB~~-2 Claims only.

| <u>Summary of Classification of Claims and Interests</u> |   |               |                      |
|--|---|---------------|----------------------|
| <u>Class</u>   | <u>Claim</u>                                  | <u>Status</u> | <u>Voting Rights</u> |
| 1.   | Non-Tax Priority Claims                       | Unimpaired    | Deemed to Accept     |
| 2.   | Other Secured Claims                          | Unimpaired    | Deemed to Accept     |
| 3.   | Unimpaired Unsecured Claims                   | Unimpaired    | Deemed to Accept     |
| 4.   | Prepetition Lenders Claims                    | Unimpaired    | Deemed to Accept     |
| 5.   | Prepetition Senior Notes Claims               | Impaired      | Entitled to Vote     |
| 6-A.   | Prepetition Senior Subordinated Notes Claims  | Impaired      | Entitled to Vote     |
| 6-B-1.   | Rejection Claims Against Only Bally           | Impaired      | Deemed to Reject     |
| 6-B-2.   | Rejection Claims Against Any Affiliate Debtor | Impaired      | Deemed to Reject     |
| 7.   | Old Common Stock                              | Impaired      | Deemed to Reject     |
| 8.   | Old Unexercised Equity Interests              | Impaired      | Deemed to Reject     |
| 9.   | Old Equity Interests in                       | Unimpaired    | Deemed to Accept     |

pursuant to section 1123(a)(6) of the Bankruptcy Code, a provision prohibiting the issuance of non-voting equity securities, but only to the extent required by section 1123(a)(6) of the Bankruptcy Code; (ii) authorize the issuance of New Common Stock in an amount not less than the amount necessary to permit the distributions thereof required or contemplated by this Plan; (iii) to the extent necessary or appropriate, include restrictions on the Transfer of New Common Stock; and (iv) to the extent necessary or appropriate, include such provisions as may be needed to effectuate and consummate this Plan and the transactions contemplated herein. After the Effective Date, the Reorganized Debtors may amend and restate their respective certificates or articles of incorporation and by-laws, and other applicable organizational documents, as permitted by applicable law.

(b) *Directors and Officers of the Reorganized Debtors.*

(i) In the event that the Harbinger Investment Effective Date Condition is satisfied, subject to any requirement of Bankruptcy Court approval pursuant to section 1129(a)(5) of the Bankruptcy Code, as of the Effective Date, the initial officers of Reorganized Bally shall be the officers of Bally existing immediately prior to the Effective Date. On the Effective Date, the board of directors of Reorganized Bally shall be selected by the New Investors and identified via a Plan supplement filed with the Bankruptcy Court at least 10 days prior to the Confirmation Hearing. The boards of directors and initial officers of the Reorganized Affiliate Debtors on the Effective Date shall be comprised of the same individuals who currently serve in such capacities immediately prior to the Effective Date (other than those directors of the Affiliate Debtors listed on the resignation plan supplement to be filed with the Bankruptcy Court prior to the Confirmation Hearing, which listed directors will be deemed to have resigned from the applicable Affiliate Debtors on and as of the Effective Date). Pursuant to section 1129(a)(5) of the Bankruptcy Code, the Debtors will disclose, at or prior to the Confirmation Hearing, the identity and affiliations of any Person proposed to serve on the initial board of directors of Reorganized Bally, and, to the extent such Person is an insider other than by virtue of being a director, the nature of any compensation for such Person. The length of the initial term of each director shall be one year. Each such director and officer shall serve from and after the Effective Date pursuant to applicable law and the terms of the Amended Certificate of Incorporation, the other constituent and organizational documents of the Reorganized Debtors. The existing board of directors of Bally will be deemed to have resigned on and as of the Effective Date.

(ii) In the event that the Backstop Rights Offering Effective Date Condition is satisfied, subject to any requirement of Bankruptcy Court approval pursuant to section 1129(a)(5) of the Bankruptcy Code, as of the Effective Date, the initial officers of Reorganized Bally shall be the officers of Bally existing immediately prior to the Effective Date. On the Effective Date, the board of directors of Reorganized Bally shall have not less than three and not more than nine members selected by the holders of a majority of the Allowed Prepetition Senior Subordinated Notes Claims and identified via a Plan supplement filed with the Bankruptcy Court at least 10 days prior to the Confirmation Hearing. The boards of directors and initial officers of the Reorganized Affiliate Debtors on the Effective Date shall be comprised of the same individuals who currently serve in such capacities immediately prior to the Effective Date (other than those directors of the Affiliate Debtors listed on the resignation plan supplement to be filed with the Bankruptcy Court prior to the Confirmation Hearing, which listed directors will be deemed to have resigned from the applicable Affiliate Debtors on and as of the Effective Date). Pursuant to section 1129(a)(5) of the Bankruptcy Code, the Debtors will disclose, at or prior to the Confirmation Hearing, the identity and affiliations of any Person proposed to serve on the initial board of directors of Reorganized Bally, and, to the extent such Person is an insider other than by virtue of being a director, the nature of any compensation for such Person. The length of the initial term of each director shall be one year. Each such director and officer shall serve from and after the Effective Date pursuant to applicable law and the terms of the Amended Certificate of Incorporation, the other constituent and organizational documents of the Reorganized Debtors. The existing board of directors of Bally will be deemed to have resigned on and as of the Effective Date.

(c) *Corporate Action.* On the Effective Date, the adoption of the Amended Certificate of Incorporation and By-Laws and similar constituent and organizational documents, and the selection of directors and officers for, each of the Reorganized Debtors, and all other actions contemplated by or described in this Plan with respect thereto, shall be authorized and approved and be binding and in full force and effect in all respects (subject to the provisions of this Plan and the Confirmation Order), in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule (other than filing such organizational documents with the applicable governmental unit as required by applicable law) or the vote, consent, authorization or approval of any Person. All matters provided for in this Plan involving the legal or corporate structure of the Debtors or the Reorganized Debtors, and any legal or corporate action required by the Debtors or the Reorganized Debtors in connection with this Plan, shall be deemed to have occurred and shall be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers or directors of the Debtors or the Reorganized Debtors or by any other Person. On the Effective Date, the appropriate officers of the Debtors and Reorganized Debtors and members of their respective boards of directors are authorized to issue, execute, and deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtors and Reorganized Debtors, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

## 5.5 Cancellation of Notes, Instruments, Debentures, Preferred Stock and Common Stock

On the Effective Date, except as otherwise provided in this Plan or the Confirmation Order, (i) the Prepetition Senior Notes, the Prepetition Senior Subordinated Notes, the Old Common Stock, the Old Unexercised Equity Interests, and any other notes, bonds (with the exception of any surety bonds outstanding), indentures, or other instruments or documents evidencing or creating any indebtedness or obligations of a Debtor that are Impaired under this Plan shall be cancelled and extinguished, and (ii) the obligations of the Debtors under any agreements, documents, indentures, or certificates of designation governing the Prepetition Senior Notes, Prepetition Senior Subordinated Notes, Old Common Stock, Old Unexercised Equity Interests, and any other notes, bonds, indentures, or other instruments or documents evidencing or creating any indebtedness or obligations of a Debtor that are Impaired under this Plan shall be, and are hereby, discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers or directors of the Debtors or the Reorganized Debtors or by any other Person. Notwithstanding the foregoing, the Prepetition Senior Notes Indenture and the Prepetition Senior Subordinated Notes Indenture shall continue in effect solely for the purposes of: (i) allowing Prepetition Senior Noteholders and Prepetition Senior Subordinated Noteholders to receive distributions under this Plan; and (ii) allowing and preserving the rights of the Prepetition Senior Notes Indenture Trustee and the Prepetition Senior Subordinated Notes Indenture Trustee to make distributions in satisfaction of Allowed Prepetition Senior Notes Claims and Allowed Prepetition Senior Subordinated Notes Claims, but in all cases subject to the terms and conditions of the Prepetition Senior Notes Indenture and Prepetition Senior Subordinated Notes Indenture, including, but not limited to, any charging lien or priority payment rights of the Prepetition Senior Notes Indenture Trustee and the Prepetition Senior Subordinated Notes Indenture Trustee. The Prepetition Senior Notes Indenture Trustee and the Prepetition Senior Subordinated Notes Indenture Trustee shall be entitled to reasonable compensation to the extent that they perform services for the Prepetition Senior Noteholders and the Prepetition Senior Subordinated Noteholders, respectively, (i) before the Effective Date, in Cash on the Effective Date and (ii) after the Effective Date, in Cash and in accordance with the terms of the Prepetition Senior Notes Indenture and the Prepetition Senior Subordinated Notes Indenture, in both cases without further notice to or order of the Bankruptcy Court. As of the Effective Date, the Prepetition Senior Notes and the Prepetition Senior Subordinated Notes shall be surrendered to the Prepetition Senior Notes Indenture Trustee and the Prepetition Senior Subordinated Notes Indenture Trustee, respectively, in accordance with the terms of the Prepetition Senior Notes Indenture and the Prepetition Senior Subordinated Notes Indenture. All surrendered and canceled Prepetition Senior Notes and Prepetition Senior Subordinated Notes held by the Prepetition Senior Notes Indenture Trustee and the Prepetition Senior Subordinated Notes Indenture Trustee shall be disposed of in accordance with the applicable terms and conditions of the Prepetition Senior Notes Indenture and the Prepetition Senior Subordinated Notes Indenture.

## 5.6 Issuance of New Securities and Related Documentation

On, or as soon as reasonably practicable after, the Effective Date, Reorganized Bally is authorized to and shall issue the New Common Stock, the New Senior Second Lien

satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such distribution, and (ii) no distribution shall be made to or on behalf of such Holder pursuant to this Plan unless and until such Holder has made arrangements satisfactory to the Reorganized Debtors for the payment and satisfaction of such tax obligations. Any Cash, New Common Stock, New Senior Second Lien Notes, New Subordinated Notes (if any), New Harbinger Subordinated Notes (if any), New Junior Subordinated Notes (if any), Rights Offering Senior Subordinated Notes (if any), other New Securities and Documents and/or other consideration or property to be distributed pursuant to this Plan shall, pending the implementation of such arrangements, be treated as an undeliverable distribution pursuant to Section 6.4 of this Plan.

## 6.9 Setoffs

The Reorganized Debtors may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy laws, but shall not be required to, set off against any Claim, the payments or other distributions to be made pursuant to this Plan in respect of such Claim, or claims of any nature whatsoever that the Debtors or the Reorganized Debtors may have against the Holder of such Claim; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Reorganized Debtors of any such claim that the Debtors or the Reorganized Debtors may have against such Holder.

## 6.10 Fractional Shares

No fractional shares of New Common Stock shall be distributed by the Debtors or Reorganized Debtors. Where a fractional share would otherwise be called for, the actual issuance shall reflect a rounding up (in the case of .50 or more than .50) of such fraction to the nearest whole share of New Common Stock or a rounding down of such fraction (in the case of less than .50).

## 6.11 Surrender of Canceled Notes and Canceled Instruments of Securities

(a) *Generally.* As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim or Allowed Interest evidenced by the instruments, securities, notes, or other documentation canceled pursuant to Section 5.5 of this Plan, the Holder of such Claim or Interest shall tender the applicable instruments, securities, notes or other documentation evidencing such Claim or Interest to the Reorganized Debtors or other applicable Disbursing Agent unless waived in writing by the Debtors or the Reorganized Debtors, as applicable.

(b) *Prepetition Notes.* Each Holder of a Prepetition Senior Subordinated Notes Claim or a Prepetition Senior Notes Claim shall tender its respective Prepetition Senior Subordinated Notes or Prepetition Senior Notes relating to such Claim to the Reorganized Debtors or Disbursing Agent in accordance with written instructions to be provided to such Holders by the Reorganized Debtors or the Prepetition Senior Subordinated Notes Indenture Trustee or the Prepetition Senior Notes Indenture Trustee as promptly as practicable following the Effective Date. Such instructions shall specify that delivery of such Prepetition Senior Subordinated Notes or Prepetition Senior Notes will be effected, and risk of loss and title thereto

will pass, only upon the proper delivery of such Prepetition Senior Subordinated Notes or Prepetition Senior Notes with a letter of transmittal in accordance with such instructions. All surrendered Prepetition Senior Subordinated Notes and Prepetition Senior Notes shall be marked as canceled.

(c) *Old Common Stock.* To the extent applicable, each Holder of Old Common Stock shall tender its Old Common Stock to the Reorganized Debtors or their designated agent in accordance with written instructions to be provided to such Holders by the Reorganized Debtors as promptly as practicable following the Effective Date. Such instructions shall specify that delivery of such Old Common Stock will be effected, and risk of loss and title thereto will pass, only upon the proper delivery of such Old Common Stock with a letter of transmittal in accordance with such instructions. All surrendered Old Common Stock shall be marked as canceled.

(d) *Failure to Surrender Security Instruments.* Any Holder of a Prepetition Senior Notes Claim, Prepetition Senior Subordinated Notes Claim and/or Old Common Stock that fails to surrender or is deemed to have failed to surrender the applicable note or security required to be tendered hereunder within one (1) year after the Effective Date shall have its Claim and Interest and its distribution pursuant to this Plan on account of such Claim or Interest discharged and shall be forever barred from asserting any such Claim or Interest against the Reorganized Debtors or their respective property. In such cases, any Cash, New Common Stock, New Senior Second Lien Notes, New Subordinated Notes, New Junior Subordinated Notes, Rights Offering Senior Subordinated Notes, New Harbinger Subordinated Notes, other New Securities and Documents and/or other consideration or property held for distribution on account of such Claim or Interest shall be disposed of pursuant to Section 6.4(iii) of this Plan.

#### **6.12 Lost, Stolen, Mutilated, or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed shall, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Reorganized Debtors and other applicable Disbursing Agent: (x) evidence reasonably satisfactory to the Reorganized Debtors and other applicable Disbursing Agent of such loss, theft, mutilation, or destruction; and (y) such security or indemnity as may be required by the Reorganized Debtors and other applicable Disbursing Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Allowed Interest. Upon compliance with this Section 6.12 as determined by the Debtors or Reorganized Debtors by a Holder of a Claim or Interest evidenced by a security or note, such Holder shall, for all purposes under this Plan, be deemed to have surrendered such security or note to the Reorganized Debtors and other applicable Disbursing Agent.

#### **6.13 Distributions from Old Common Stock Cash Amount**

**In the event that the Harbinger Investment Effective Date Condition is satisfied, for purposes of determining distributions to be made from the Old Common Stock Cash Amount, each Holder of an Allowed Interest represented by Old Common**

Stock will receive its Pro Rata share of the Old Common Stock Cash Portion, and each Holder of an Allowed 510(b) Equity Claim will receive its Pro Rata share of the Old Common Stock Remaining Cash Portion.

## **ARTICLE SEVEN TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

### **7.1 Assumption of Executory Contracts and Unexpired Leases**

On the Effective Date, all executory contracts and unexpired leases of the Debtors will be deemed assumed in accordance with, and subject to, the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, except those executory contracts (including, without limitation, employment agreements) and unexpired leases that (i) have been rejected by order of the Bankruptcy Court, (ii) are the subject of a motion to reject pending on the Effective Date, (iii) are identified on Exhibit E-1 or Exhibit E-2 hereto (which Exhibits E-1 and E-2 may be amended by the Debtors (with the consent of the Majority Backstop Parties, if the Subscription and Backstop Purchase Agreement is then in effect, and/or the New Investors, if the Investment Agreement is then in effect) to add or remove executory contracts and unexpired leases by filing with the Bankruptcy Court amended Exhibits E-1 and E-2 and serving them on the affected contract parties at any time on or prior to five (5) days prior to the deadline set by the Bankruptcy Court for Filing objections to confirmation of this Plan), or (iv) are rejected pursuant to the terms of this Plan. Without amending or altering any prior order of the Bankruptcy Court approving the assumption or rejection of any executory contract or unexpired lease, entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions and rejections pursuant to sections 365(a) and 1123 of the Bankruptcy Code. To the extent any provision in any executory contract or unexpired lease assumed pursuant to this Plan (including, without limitation, any “change of control” provision) restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the applicable Reorganized Debtor’s assumption of such executory contract or unexpired lease, then such provision shall be deemed modified such that the transactions contemplated by this Plan shall not entitle the non-debtor party thereto to terminate such executory contract or unexpired lease or to exercise any other default-related rights with respect thereto. Each executory contract and unexpired lease assumed pursuant to this Article VII shall revert in and be fully enforceable by the respective Reorganized Debtor in accordance with its terms, except as modified by the provisions of this Plan, any order of the Bankruptcy Court authorizing and providing for its assumption, or applicable law.

### **7.2 Claims Based on Rejection of Executory Contracts or Unexpired Leases**

All proofs of claim with respect to Claims arising from or in connection with the rejection of executory contracts or unexpired leases, if any, must be filed with the Bankruptcy Court within thirty (30) days after the date of entry of an order of the Bankruptcy Court approving such rejection or, if listed in Exhibits E-1 or E-2, thirty (30) days after the date of entry of the Confirmation Order. Any Claims arising from or in connection with the rejection of an executory contract or unexpired lease not filed within such time will be forever barred from

Claims Objection Deadline (unless extended by an order of the Bankruptcy Court), the Debtors or the Reorganized Debtors, as the case may be, shall file objections to such Claims with the Bankruptcy Court and serve such objections upon the Holders of such Claims to which objections are made. Nothing contained herein, however, shall limit the Reorganized Debtors' right to object to Claims, if any, filed or amended after the Claims Objection Deadline. The Debtors and the Reorganized Debtors shall be authorized to, and shall, resolve all Rejection Claims and 510(b) Equity Claims by withdrawing or settling such objections thereto, or by litigating to Final Order in the Bankruptcy Court, the validity, nature, and/or amount thereof.

(b) *All Other Claims and Interests.* Except as otherwise provided in this Plan, holders of Claims and Interests other than Holders of Rejection Claims and 510(b) Equity Claims shall not be required to file a proof of claim or proof of interest, and no such parties should file a proof of claim or proof of interest. Unless disputed by a holder of a Claim or Interest or by the Debtors, the amount set forth in the Schedules (if the Debtors are required to file Schedules) or in the books and records of the Debtors (if the Debtors are not required to file Schedules) shall constitute the amount of the Allowed Claim or Allowed Interest of such holder. If any such holder of a Claim or Interest disagrees with the Debtors' determination with respect to the Allowed amount of such Holder's Claim or Interest, such Holder must so advise the Debtors in writing (at any time whether prior to or after the Effective Date), in which event the Claim or Interest will be a Disputed Claim or Disputed Interest. The Debtors intend to attempt to resolve any such disputes consensually or through judicial means outside the Bankruptcy Court (and no further Bankruptcy Court order shall be required in connection with such resolutions). Nevertheless, no later than ninety (90) days after the Effective Date (or such later date as approved by this Court for cause shown after notice and hearing), the Debtors may, in their discretion, File with the Bankruptcy Court (or any other court of competent jurisdiction) an objection to the allowance of any Claim or Interest or any other appropriate motion or adversary proceeding with respect thereto. All such objections will be litigated to Final Order; provided, however, that the Debtors may compromise and settle, withdraw or resolve by any other method approved by the Bankruptcy Court, any objection to Claims and Interests without further order of the Bankruptcy Court.

## 8.2 No Distributions Pending Allowance

Notwithstanding any other provision of this Plan to the contrary, no payments or distributions of any kind or nature shall be made with respect to all or any portion of a Disputed Claim or Disputed Interest unless and until all objections to such Disputed Claim or Disputed Interest have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim has become an Allowed Claim or the Disputed Interest has become an Allowed Interest.

## 8.3 Distributions on Account of Disputed Claims Once They Are Allowed and Additional Distributions on Account of Previously Allowed Claims

On each Quarterly Distribution Date (or such earlier date as determined by the Reorganized Debtors in their sole discretion but subject to Section 8.2 of this Plan), the Reorganized Debtors will make distributions (a) on account of any Disputed Claim that has become an Allowed Claim during the preceding calendar quarter or any Disputed Interest that

**ARTICLE TEN**  
**EFFECT OF PLAN CONFIRMATION**

**10.1 Binding Effect; Plan Binds All Holders of Claims and Interests**

On the Effective Date, and effective as of the Effective Date, this Plan shall, and shall be deemed to, be binding upon and inure to the benefit of the Debtors, all present and former Holders of Claims against and Interests in any Debtor, and their respective successors and assigns, including, but not limited to, the Reorganized Debtors, regardless of whether any such Holder failed to vote to accept or reject this Plan or affirmatively voted to reject this Plan.

**10.2 Releases and Related Injunctions**

(a) *Releases by the Debtors.* ~~Effective~~ Subject to the provisions of Section 10.9 hereof, effective as of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtors and Reorganized Debtors, in their individual capacities and as debtors in possession, will be deemed to forever release, waive, and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities (other than the rights of the Debtors or Reorganized Debtors to enforce this Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered under or in connection with this Plan or assumed pursuant to this Plan), whether liquidated or unliquidated, fixed or contingent, matured, or unmatured, known or unknown, foreseen, or unforeseen, then existing or thereafter arising, in law, equity, or otherwise that are based in whole or part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Reorganized Debtors, the Chapter 11 Cases, the Disclosure Statement, the First Restructuring Support Agreement, the Second Restructuring Support Agreements (if the Harbinger Investment Effective Date Condition is satisfied or as otherwise provided in the Investment Agreement), the Investment Agreement (if the Harbinger Investment Effective Date Condition is satisfied or as otherwise provided in the Investment Agreement) or this Plan (or the solicitation of votes on this Plan), and that could have been asserted by or on behalf of the Debtors, their Estates or the Reorganized Debtors against any of the Released Parties, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person.

(b) *Releases by Holders of Claims and Interests.* ~~Effective~~ of Claims Against Debtor-Related Released Parties. Subject to the provisions of Section 10.9 hereof, effective as of the Effective Date, for good and valuable consideration and in consideration for the obligations of the Debtors and the Reorganized Debtors under this Plan and the property, securities, contracts, instruments, releases, and other agreements or documents to be delivered in connection with this Plan, to the fullest extent permissible under applicable law, the Holders of Claims or Interests, and each of their respective Related Persons, will be deemed to completely and forever release, waive, void, extinguish, and discharge ~~the Debtors and Reorganized Debtors, and each of their respective~~ Debtor-Related Persons Released Parties, from any and all claims, demands, debts, rights, Causes of Action, or liabilities (other than the right to enforce the Debtors' or the Reorganized Debtors' obligations under this Plan, and the contracts, instruments, releases, agreements, and documents delivered under this Plan), whether liquidated

or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise, that are based in whole or in part on any act or omission, transaction, event, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Reorganized Debtors, the Chapter 11 Cases, the Disclosure Statement, the First Restructuring Support Agreement, the Second Restructuring Support Agreements (if the Harbinger Investment Effective Date Condition is satisfied or as otherwise provided in the Investment Agreement), the Investment Agreement (if the Harbinger Investment Effective Date Condition is satisfied or as otherwise provided in the Investment Agreement) or this Plan (or the solicitation of votes on this Plan) and that could have been asserted by or on behalf of (whether directly or derivatively), or against, ~~the Debtors, their Estates or the Reorganized Debtors or against any of their respective Related Persons, any or all of the Debtor-Related Released Parties,~~ in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person.

(c) ~~Releases by Prepetition Senior Noteholders. Effective~~ Holdings of Claims and Interests of Claims Against Other Released Parties. In addition to, and without limiting, the release provisions of Section 10.2(b) in favor of the Debtor-Related Released Parties, effective as of the Effective Date, for good and valuable consideration and in consideration for the obligations of the Debtors and ~~the Reorganized Debtors~~ the Reorganized Debtors under this Plan and the property, securities, contracts, instruments, releases, and other agreements or documents to be delivered in connection with this Plan, to the fullest extent permissible under applicable law, the ~~Prepetition Senior Notes Indenture Trustee and each Prepetition Senior Noteholder, and each of their respective Related Persons,~~ Holdings of Claims or Interests, and each of their respective Related Persons, will be deemed to completely and forever release, waive, void, extinguish, and discharge each of the ~~Released Parties~~ Other Released Parties, from any and all claims, demands, debts, rights, Causes of Action, or liabilities (other than the right to enforce the Debtors' or the Reorganized Debtors' obligations under this Plan, and the contracts, instruments, releases, agreements, and documents delivered under this Plan), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise, that are based in whole or in part on any act or omission, transaction, event, or other occurrence taking place on or prior to the Effective Date in any way relating to the ~~Debtors, the Reorganized Debtors, the~~ Chapter 11 Cases, the Disclosure Statement, the First Restructuring Support Agreement, the Second Restructuring Support Agreements (if the Harbinger Investment Effective Date Condition is satisfied or as otherwise provided in the Investment Agreement), the Investment Agreement (if the Harbinger Investment Effective Date Condition is satisfied or as otherwise provided in the Investment Agreement) or this Plan (or the solicitation of votes on this Plan) and that could have been asserted by or on behalf (whether directly or derivatively) of the Debtors, their Estates or the Reorganized Debtors or against any of the Other Released Parties, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person.

(d) ~~Releases by Prepetition Senior Subordinated Noteholders. Effective as of the Effective Date, for good and valuable consideration and in consideration for the obligations of the Debtors and the Reorganized Debtors under this Plan and the property, securities,~~

~~contracts, instruments, releases, and other agreements or documents to be delivered in connection with this Plan, to the fullest extent permissible under applicable law, the Prepetition Senior Subordinated Notes Indenture Trustee and each Prepetition Senior Subordinated Noteholder, and each of their respective Related Persons, will be deemed to completely and forever release, waive, void, extinguish, and discharge each of the Released Parties from any and all claims, demands, debts, rights, Causes of Action, or liabilities (other than the right to enforce the Debtors' or the Reorganized Debtors' obligations under this Plan, and the contracts, instruments, releases, agreements, and documents delivered under this Plan), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise, that are based in whole or in part on any act or omission, transaction, event, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Reorganized Debtors, the Chapter 11 Cases, the Disclosure Statement, the First Restructuring Support Agreement, the Second Restructuring Support Agreements (if the Harbinger Investment Effective Date Condition is satisfied or as otherwise provided in the Investment Agreement), the Investment Agreement (if the Harbinger Investment Effective Date Condition is satisfied or as otherwise provided in the Investment Agreement) or this Plan (or the solicitation of votes on this Plan) and that could have been asserted by or on behalf (whether directly or derivatively) of the Debtors, their Estates or the Reorganized Debtors or against any of the Released Parties, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person.~~

**(d)** ~~(e)~~ *Injunction Related to Releases.* The Confirmation Order will permanently enjoin the commencement or prosecution by any Person or Entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, or liabilities released pursuant to this Plan, including but not limited to the claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, or liabilities released in this Section 10.2.

### 10.3 Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan shall be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims of any kind or nature whatsoever against the Debtors or any of their assets or properties, and regardless of whether any property shall have been distributed or retained pursuant to this Plan on account of such Claims. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtors, and each of them, shall be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

### 10.4 Preservation of Rights of Action; Settlement of Litigation Claims

(a) *Preservation of Rights of Action.* Except as otherwise provided in this Plan, the Confirmation Order, or in any document, instrument, release, or other agreement entered into in connection with this Plan or approved by order of the Bankruptcy Court, in accordance with section 1123(b) of the Bankruptcy Code, the Debtors and their Estates shall retain the Litigation Claims. The Reorganized Debtors, as the successors in interest to the Debtors and the Estates, may, and shall have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Litigation Claims, including, without limitation, any and all derivative actions pending or otherwise existing against the Debtors as of the Effective Date. Notwithstanding the foregoing, the Debtors and the Reorganized Debtors shall not file, commence, or pursue any claim, right, or cause of action under section 547 of the Bankruptcy Code; provided, however, that, notwithstanding any statute of limitations, the Debtors and Reorganized Debtors shall have the right to assert or raise such Causes of Action (a) as defenses or counterclaims (up to the amount asserted in the Claims against the Debtors) with respect to any Disputed Claim, and (b) in connection with the Claims objection process with respect to a Claim that is not an Allowed Claim, in which case such Causes of Action can be raised as an objection to such Claim and not as defenses or counterclaims.

(b) *Settlement of Litigation Claims.* At any time after the Confirmation Date and before the Effective Date, notwithstanding anything in this Plan to the contrary, the Debtors may settle any or all of the Litigation Claims with the approval of the Bankruptcy Court pursuant to Bankruptcy Rule 9019. After the Effective Date, the Reorganized Debtors may, and shall have the exclusive right to, compromise and settle any Claims against them and claims they may have against other Person or Entity, including, without limitation, the Litigation Claims, without notice to or approval from the Bankruptcy Court, including, without limitation, any and all derivative actions pending or otherwise existing against the Debtors as of the Effective Date.

## 10.5 Exculpation and Limitation of Liability

~~None~~ Subject to the provisions of Section 10.9 hereof, none of the Released Parties shall have or incur any liability to, or be subject to any right of action by, any Holder of a Claim or an Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or agents acting in such capacity, or affiliates, or any of their successors or assigns, or any other Released Party, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, formulating, negotiating, or implementing this Plan, the First Restructuring Support Agreement, the Second Restructuring Support Agreements (if the Harbinger Investment Effective Date Condition is satisfied or as otherwise provided in the Investment Agreement), the Investment Agreement (if the Harbinger Investment Effective Date Condition is satisfied or as otherwise provided in the Investment Agreement), the prepetition or postpetition solicitation of acceptances of this Plan, the prepetition or postpetition solicitation of subscriptions with respect to the Rights Offering, the Subscription and Backstop Purchase Agreement and the acts taken thereunder, the Investment Agreement (if the Harbinger Investment Effective Date Condition is satisfied or as otherwise provided in the Investment Agreement) and the acts taken thereunder, the pursuit of confirmation of this Plan, the confirmation of this Plan, the consummation of this Plan, or the administration of this Plan or the property to be distributed under this Plan, except for their respective actions that constitute gross negligence or willful misconduct as determined by a Final Order entered by

a court of competent jurisdiction. For avoidance of doubt, none of the Released Parties shall have or incur any liability to, or be subject to any right of action by, any Holder of a Claim or an Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or agents acting in such capacity, or affiliates, or any of their successors or assigns, or any other Released Party, for any Plan-Related Claim. Without limiting the foregoing, the Released Parties shall in all respects be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under this Plan.

## 10.6 Injunctions

(a) Except as otherwise provided in this Plan or in any document, instrument, release, or other agreement entered into in connection with this Plan or approved by order of the Bankruptcy Court, the Confirmation Order shall provide, among other things, that from and after the Effective Date all Persons or Entities who have held, hold, or may hold Claims against or Interests in the Debtors are (i) permanently enjoined from taking any of the following actions against the Estate(s), or any of their property, on account of any such Claims or Interests and (ii) permanently enjoined from taking any of the following actions against any of the Debtors, the Reorganized Debtors or their property on account of such Claims or Interests: (A) commencing or continuing, in any manner or in any place, any action, or other proceeding; (B) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree or order; (C) creating, perfecting, or enforcing any Lien or encumbrance; (D) asserting a setoff or right of subrogation of any kind against any debt, liability or obligation due to the Debtors; and (E) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of this Plan; provided, however, that nothing contained herein shall preclude such Persons or Entities from exercising their rights pursuant to and consistent with the terms of this Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered under or in connection with this Plan.

(b) By accepting distributions pursuant to this Plan, each Holder of an Allowed Claim or Allowed Interest will be deemed to have specifically consented to the injunctions set forth in this Section 10.6.

## 10.7 Term of Bankruptcy Injunction or Stays

All injunctions or stays provided for in the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

## 10.8 Termination of Subordination Rights and Settlement of Related Claims

The classification and manner of satisfying all Claims and Interests under this Plan take into consideration all subordination rights, whether arising by contract or under general principles of equitable subordination, section 510(b) or 510(c) of the Bankruptcy Code, or otherwise. All subordination rights that a Holder of a Claim or Interest may have with respect to any distribution to be made pursuant to this Plan will be discharged and terminated, and all actions related to the enforcement of such subordination rights will be permanently enjoined.

Accordingly, distributions pursuant to this Plan to Holders of Allowed Claims and Allowed Interests will not be subject to payment to a beneficiary of such terminated subordination rights, or to levy, garnishment, attachment, or other legal process by a beneficiary of such terminated subordination rights; provided, however, that nothing contained herein shall preclude any Person or Entity from exercising their rights pursuant to and consistent with the terms of this Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered under or in connection with this Plan.

#### 10.9 Limitations of Applicability of Releases and Exculpatory Provisions to Governmental Entities

Except with respect to Plan-Related Claims, nothing in the Confirmation Order or the Plan (i) shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including, without limitation, any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against the Released Parties, but excluding any Plan-Related Claims, (ii) enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings against the Released Parties for any liability whatever, including, without limitation, any claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state or local authority, but excluding any Plan-Related Claims, or (iii) exculpate any Released Party from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including, without limitation, any liabilities arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against the Released Parties, but excluding any liabilities in respect of any Plan-Related Claims. Notwithstanding anything to the contrary in the Confirmation Order or the Plan, the Securities and Exchange Commission ("SEC") expressly reserves its right to continue to investigate, and, in its sole discretion, prosecute and enforce any and all claims against any or all of the Debtors or the Reorganized Debtors arising from any prepetition violations by any Debtor of any of the U.S. securities laws other than Plan-Related Claims (collectively, the "Reserved SEC Claims"), including, without limitation, any claims for disgorgement of any benefits received by any Debtor as a result of any such violations and any claims for penalties imposed by the SEC in respect of any such violations. For avoidance of doubt, pursuant to Section 10.2(b) of the Plan, all Plan-Related Claims of the United States Government or any of its agencies or any state and local authority whatsoever shall be, and hereby are, released, waived and discharged. Nothing in the Confirmation Order or the Plan shall result in the discharge of any Reserved SEC Claims, and the SEC expressly reserves its rights to assert that any and all Reserved SEC Claims are non-dischargeable as against the Reorganized Debtors pursuant to Sections 1141(d)(6)(a) and 523(a)(2)(A) of the Bankruptcy Code. The SEC has advised the Court and the Debtors that as of the entry of this Order, it has not yet determined whether to assert any Reserved SEC Claims against any or all of the Debtors or Reorganized Debtors.

Dated: New York, New York  
~~August~~September 17, 2007

Respectfully Submitted,

BALLY TOTAL FITNESS HOLDING  
CORPORATION

By: /s/ Don R. Kornstein  
Name: Don R. Kornstein  
Title: Chief Restructuring Officer

Each Debtor Listed on Appendix 1

By: /s/ Don R. Kornstein  
Name: Don R. Kornstein  
Title: Chief Restructuring Officer

David S. Heller  
Richard A. Levy  
Keith A. Simon  
Sears Tower, Suite 5800  
233 South Wacker Drive  
Chicago, Illinois 60606-6401  
Telephone: (312) 876-7700  
Facsimile: (312) 993-9767

-and-

Henry P. Baer, Jr. (HB-3866)  
Joseph Furst, III (JF-6136)  
885 Third Avenue, Suite 1000  
New York, New York 10022  
Telephone: (212) 906-1200

~~Proposed~~ Counsel for Debtors and Debtors-in-  
Possession

Appendix 1

Bally ARA Corporation  
Bally Fitness Franchising, Inc.  
Bally Franchise RSC, Inc.  
Bally Franchising Holdings, Inc.  
Bally Real Estate I LLC  
Bally REFS West Hartford, LLC  
Bally Sports Clubs, Inc.  
Bally Total Fitness Corporation  
Bally Total Fitness Franchising, Inc.  
Bally Total Fitness Holding Corporation  
Bally Total Fitness International, Inc.  
Bally Total Fitness of California, Inc.  
Bally Total Fitness of Colorado, Inc.  
Bally Total Fitness of Connecticut Coast, Inc.  
Bally Total Fitness of Connecticut Valley, Inc.  
Bally Total Fitness of Greater New York, Inc.  
Bally Total Fitness of Minnesota, Inc.  
Bally Total Fitness of Missouri, Inc.  
Bally Total Fitness of Philadelphia, Inc.  
Bally Total Fitness of Rhode Island, Inc.  
Bally Total Fitness of the Mid-Atlantic, Inc.  
Bally Total Fitness of the Midwest, Inc.  
Bally Total Fitness of the Southeast, Inc.  
Bally Total Fitness of Toledo, Inc.  
Bally Total Fitness of Upstate New York, Inc.  
BTF Cincinnati Corporation  
BTF Europe Corporation  
BTF Indianapolis Corporation  
BTF Minneapolis Corporation  
BTF/CFI, Inc.  
BTFCC, Inc.  
BTFF Corporation

Greater Philly No. 1 Holding Company  
Greater Philly No. 2 Holding Company  
Health & Tennis Corporation of New York  
Holiday Health Clubs of the East Coast, Inc.  
Holiday/Southeast Holding Corp.  
Jack LaLanne Holding Corp.  
New Fitness Holding Co., Inc.  
Nycon Holding Co., Inc.  
Rhode Island Holding Company  
Tidelands Holiday Health Clubs, Inc.  
U.S. Health, Inc.

## MANAGEMENT INCENTIVE PLAN

~~#~~On the Effective Date, regardless of whether the Backstop Rights Offering Effective Date Condition ~~(as defined in the First Amended Joint Prepackaged Chapter 11 Plan of Reorganization of Bally Total Fitness Holding Corporation and Its Affiliate Debtors) is satisfied, the Management Incentive Plan shall be as set forth in Section I of this Exhibit.~~ ~~If~~or the Harbinger Investment Effective Date Condition (as each term is defined in the First Amended Joint Prepackaged Chapter 11 Plan of Reorganization of Bally Total Fitness Holding Corporation and Its Affiliate Debtors) is satisfied, the Management Incentive Plan shall be as set forth ~~in Section II of this Exhibit.~~

## SECTION I

The Management Incentive Plan is comprised of two components: (1) a performance bonus (“Performance Bonus”), and (2) a restructuring transaction bonus (“RTB”).

The Performance Bonus represents current annual incentive bonus awards for ongoing participation with the Debtors but with 2007 performance targets reset based on cash revenue and cash EBITDA as well as a discretionary component. The Performance Bonus is available to 27 eligible employees and has a maximum cumulative payout of approximately \$3.8 million.

The RTB represents an incentive for key employees to promptly complete a successful restructuring. The RTB is also payable if the employee is terminated without cause or constructively within six months of the restructuring transaction. The RTB is available to 9 eligible employees, divided into three groups (Class A, B and C), and has a maximum cumulative payout of \$3.2 million. The RTB is evidenced by individual bonus agreements with each eligible participant.

Class A participants include, Don R. Kornstein, the Company’s Chief Restructuring Officer, Mare Bassewitz, the Company’s Senior Vice President, Secretary and General Counsel, Bill Fanelli, Senior Vice President Planning and Development, and John Wildman, the Company’s Senior Vice President, Sales and Interim Chief Marketing Officer. They each will receive a maximum RTB if Bally consummates a restructuring transaction by October 31, 2007 (the “Target Date”), with incremental monthly reductions in the RTB for each month thereafter until the restructuring transaction is completed.

The maximum value of Mr. Kornstein’s RTB is reduced based on the number of months after the expiration of the Target Date in which a plan of reorganization becomes effective. If the plan of reorganization does not become effective within eight months of the expiration of the Target Date, Mr. Kornstein will no longer be eligible to receive any RTB.

For the other Class A participants, the RTB will be reduced by 15% of the maximum for the first three months following the Target Date in which the reorganization transaction takes place, and then 10% of the maximum for the next two months, with no further reductions after the fifth month following the Target Date. The other Class A participants will receive the minimum bonus stated below if the plan of reorganization becomes effective after more than five months after the expiration of the Target Date. The maximum and minimum amount of each Class A participant’s RTB is as follows [below](#):

| Class A Participant | Maximum RTB | Minimum RTB |
|---------------------|-------------|-------------|
| Don R. Kornstein    | \$2,100,000 | \$0         |
| Mare Bassewitz      | \$375,000   | \$131,250   |
| Bill Fanelli        | \$195,000   | \$68,250    |
| John Wildman        | \$158,375   | \$55,781    |

Class B and Class C participants will receive a set RTB, with no reduction if the restructuring is effected after the Target Date.

## SECTION II

The Management Incentive Plan is comprised of two components: (1) a performance bonus (“**Performance Bonus**”), and (2) a restructuring transaction bonus (“**RTB**”).

The Performance Bonus represents current annual incentive bonus awards for ongoing participation with the Debtors but with 2007 performance targets reset based on cash revenue and cash EBITDA as well as a discretionary component; provided, however, that the Performance Bonus for each of Mr. Bassewitz and Mr. Fanelli will in no event be less than 50% of the maximum Performance Bonus to which they are each eligible. The Performance Bonus is available to 26 eligible employees and has a maximum cumulative payout of approximately \$2.9 million. Mr. Kornstein is not eligible for a Performance Bonus, only a RTB as set forth below.

The RTB represents an incentive for key employees to promptly complete a successful restructuring. The RTB is also payable if the employee is terminated without cause or constructively within six months of the restructuring transaction. The RTB is available to 9 eligible employees, divided into three groups (Class A, B and C), and has a maximum cumulative payout of \$4.1 million. The RTB is evidenced by individual bonus agreements with each eligible participant.

The amount of Mr. Kornstein’s, Mr. Bassewitz’s, Mr. Fanelli’s and Mr. Wildman’s RTB is as follow:

| <u>Class A Participant</u> | <u>Title</u>   | <u>RTB</u>  |
|----------------------------|--|-------------|
| Don R. Kornstein           | Chief Restructuring Officer  | \$3,000,000 |
| Marc Bassewitz             | Senior Vice President,<br>Secretary and General Counsel                | \$375,000   |
| Bill Fanelli               | Senior Vice President Planning<br>and Development                      | \$195,000   |
| John Wildman               | Senior Vice President, Sales<br>and Interim Chief Marketing<br>Officer | \$158,375   |